



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

September 25, 2020

BY ECF

Honorable Laura Taylor Swain
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

MEMO ENDORSED

Re: *United States v. Michael Heyward*, 15 Cr. 341 (LTS)

Dear Judge Swain:

The Government respectfully submits this letter to update the Court on the status of the above-referenced violation proceedings.

First, although the Government is not able to communicate with Mr. Heyward through Mr. Heyward's corrlinks account, the Government and Mr. Heyward spoke briefly yesterday by telephone and discussed a potential disposition of this matter without the need for a hearing (that is, a plea). Should such an agreement be reached, the Government will promptly notify the Court. In light of the foregoing, the Government respectfully requests that the Court set a control date for the next conference for no earlier than the week of October 12, 2020, and that the deadline for the Government's oppositions to the defendant's motion to suppress (Docket No. 161) and motions for bail (Docket Nos. 167, 168)—to the extent written oppositions may be called for¹—be held in abeyance until that time.

Second, the Government reports the following updates, as discussed at the September 11, 2020 conference. Based on discussions with MCC officials, the Government understands the following:

¹ The Government respectfully submits that both motions fail under settled law. With respect to the motion to suppress, the Second Circuit has made clear that "the exclusionary rule does not apply in revocation of federal supervised release proceedings." *United States v. Hightower*, 950 F.3d 33, 38 (2d Cir. 2020) (per curiam). With respect to bail, Mr. Heyward's motions have not identified any "information . . . that was not known to the movant at the time of the [initial bail] hearing that has a material bearing on" risk of flight or dangerousness, 18 U.S.C. § 3142(f), much less do those motions establish "by clear and convincing evidence that [Mr. Heyward] is not likely to flee or pose a danger," 18 U.S.C. 3143(a)(1); *see also* Fed. R. Crim. P. 32.1(a)(6).

- On September 11, 2020, following our conference, an MCC doctor visited Mr. Heyward regarding his medical complaints.
- In addition, as of Monday, September 14, 2020, the MCC's trust fund supervisor saw Mr. Heyward regarding stamps. She had Mr. Heyward fill out a form to request stamps, which will be provided to him. Stamps are available at the commissary.
- With respect to increasing Mr. Heyward's free time, allowing inmates in the common area outside of their allotted time would defeat the MCC's current cohort procedures.

Finally, the Government reports that discovery in this case was sent to Mr. Heyward at the MCC on September 14, 2020, and that discovery has also been shared with stand-by counsel, Steven Lynch.

Respectfully submitted,

AUDREY STRAUSS
Acting United States Attorney

By: 

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Assistant United States Attorney
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Cc: Michael Heyward (By Mail)
Steven Lynch, Esq. (By ECF)
Probation Officer Claudell Brehon (By Email)

The conference is adjourned to a control date of
Monday October 19, 2020, at 9:00 a.m.

Briefing on the above-mention motions is
stayed pending further Order of the Court.
Chambers will mail a copy of this endorsed
order to Mr. Heyward. DE# 173 resolved.
SO ORDERED.

9/28/2020

/s/ Laura Taylor Swain, USDJ